

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 2, 1998

IN RE:)
)
PETITION OF NEXTLINK TENNESSEE, L.L.C.)
TO SANCTION BELL SOUTH ADVERTISING AND) DOCKET NO. 98-00654
PUBLISHING CORPORATION AND ENFORCE)
THE TRA ORDER REGARDING TELEPHONE)
DIRECTORIES)

ORDER ENFORCING TRA RULE 1220-4-2-.15
AND DENYING ISSUANCE OF SANCTIONS AGAINST BELL SOUTH ADVERTISING
AND PUBLISHING CORPORATION

This matter is before the Tennessee Regulatory Authority ("Authority") on the petition of NEXTLINK, Tennessee L.L.C. ("NEXTLINK") to sanction BellSouth Advertising and Publishing Corporation ("BAPCO") for failure to comply with TRA Rule 1220-4-2-.15, as interpreted by the Authority in Docket 96-01692, *Petition of AT&T Communications of the South Central States, Inc., for a Declaratory Order et seq.*, entered March 19, 1998 (the "Declaratory Order").^{1 / 2} The Authority considered the disposition of this matter following oral argument held on October 15, 1998.

¹ A copy of the Authority's March 19, 1998 Declaratory Order is attached hereto as "Exhibit A."

² NEXTLINK originally characterized its claim as a petition to enforce the Authority's Declaratory Order in Docket 96-01692. However, counsel for NEXTLINK later orally amended NEXTLINK's petition at oral argument on October 15, 1998, and in so doing, explained that NEXTLINK was not seeking enforcement of the Order per se but rather was seeking enforcement of TRA Rule 1220-4-2-.15 as interpreted and applied by the Declaratory Order. See Transcript of October 15, 1998, at 3.

BACKGROUND

On September 23, 1998, NEXTLINK filed its Petition seeking to convene a contested case proceeding to implement sanctions against BAPCO for an alleged refusal to comply with the Authority's Declaratory Order of March 19, 1998, which interpreted TRA Rule 1220-4-2-.15. More specifically, NEXTLINK alleged that BAPCO refused to "inform NEXTLINK of how NEXTLINK may appear on the cover of BAPCO's directories." As a result of this failure, NEXTLINK alleged that it "is unable to put its name on the cover" of BAPCO's White Pages directories as required by TRA Rule 1220-4-2-.15 and the Declaratory Order.

In a response filed on October 2, 1998, BAPCO argued that since the Declaratory Order only granted relief to AT&T and did not specifically direct BAPCO to allow NEXTLINK or other competing local carriers the opportunity to appear on the cover of BAPCO's White Pages directories, BAPCO is under no legal obligation to respond to NEXTLINK's requests.

On September 30, 1998, NEXTLINK filed an Emergency Motion to Set Hearing Date. In its Motion, NEXTLINK stated that it had been informed by BAPCO that the deadline for compilation of the next (1999) Nashville area telephone directory was October 27, 1998. Because of this pending deadline, the Authority considered the motion at its regularly scheduled Authority Conference on October 6, 1998. Based on the legal issues raised by the parties at that Conference, the Authority requested that legal briefs be filed by 4:30 p.m. on October 9, 1998, and scheduled oral arguments for October 15, 1998.

REQUIREMENTS OF TRA RULE 1220-4-2-.15

TRA Rule 1220-4-2-.15 governs telephone directories (the "White Pages") and requires that directories include on their front cover: the date of issuance, the service area

covered by the directory, and the "name of the telephone utility" serving that area. The pertinent provisions of Rule 1220-4-2-.15 are as follows:

- (1) Telephone directories shall be regularly published . . .
- (2) Upon issuance, a copy of each directory *shall be distributed to all customers serviced by that directory* . . .
- (3) *The name of the telephone utility*, the area included in the directory and the month and year of issue shall appear on the front cover.

In its Declaratory Order entered on March 19, 1998, the Authority ruled that BAPCO, which publishes the White Pages directories on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), is required to comply with the provisions of TRA Rule 1220-4-2-.15 and interpreted the rule to mean, "if more than one utility's customers are inside the same directory, then more than one utility's name would be on the cover." Declaratory Order, at 5.

The Declaratory Order, resulted from a Petition for Declaratory Order filed by AT&T Communications of the South Central States, Inc. ("AT&T") on December 16, 1996. The Order specifically directed BAPCO to comply with the rule by offering AT&T the opportunity to contract with BAPCO for the appearance of AT&T's name and logo on the cover of such directories "under the same terms and conditions" that BAPCO offers to BellSouth. The Order further required that those terms and conditions must be offered to AT&T "in a just and reasonable manner." Declaratory Order, at 9.

The Authority's Declaratory Order interpreting TRA Rule 1220-4-2-.15 is now on appeal before the Court of Appeals for the Middle Section of Tennessee.³ However, at this time, no party has requested or received a stay of the Authority's Order from the Court of Appeals.⁴

ISSUE PRESENTED FOR RESOLUTION

The fundamental issue raised by NEXTLINK's petition and BAPCO's response is whether the Authority may enforce TRA Rule 1220-4-2-.15, as interpreted in the Declaratory Order, pending appeal of the Declaratory Order. On October 15, 1998, following the submission of briefs and oral arguments, the Authority deliberated and concluded that, in the absence of a stay of the Declaratory Order, BAPCO must comply with TRA Rule 1220-4-2-.15 as interpreted in the Authority's Declaratory Order of March 19, 1998, and as applied to all similarly situated carriers. In support of that decision, the Authority makes the following findings of fact and conclusions of law.

1. NEXTLINK is a certified, competitive local exchange telephone company. *See* Docket No. 95-02502 (September 29, 1995) and Docket No. 96-00728 (April 12, 1996). NEXTLINK offers local telephone service to subscribers in Memphis and Nashville in competition with BellSouth. *See* Docket No. 97-00309, Tr. Vol. VIII B, pages 112-113.

³ *See* Transcript of October 15, 1998, 37. The matter before the Court of Appeals is *BellSouth Advertising and Publishing Corporation v. Tennessee Regulatory Authority*, Cause No. 01A01-9805-BC-00248.

⁴ The Authority fully acknowledges that the matter arising from Docket No. 96-01692 is before the Court of Appeals. However, in considering this pending matter, the Authority does not seek to expand its jurisdiction nor invade the jurisdiction exercised by the Court in Cause No. 01A01-9805-BC-00248. The Authority in its consideration of this immediate proceeding has determined that the application of TRA Rule 1220-4-2-.15, as it has been interpreted by the Authority in the prior docket, is at issue. Therefore, the Authority, while acknowledging its position of deference to the Court, notes that it has a duty to continue to abide by its rules, unless or until the Court reverses the agency's Declaratory Order. *See* Tenn. Code Ann. § 65-2-102(3).

NEXTLINK's customer listings are contained within the White Pages directories published by BAPCO on behalf of BellSouth. *See* Docket No. 97-00309, Tr. Vol. XIA, pages 10-11. As required by federal law, the White Page Directories published by BAPCO on behalf of BellSouth must include the names and telephone numbers of NEXTLINK's local customers.⁵ The facts from the foregoing dockets were officially noticed by the Authority in a letter dated October 16, 1998, without objection from the parties. A copy of the letter is attached hereto as "Exhibit B."

2. In its Declaratory Order, the Authority declared that the rule on White Pages directories applies to competitive local exchange carriers and that such carriers should be allowed the opportunity to appear on the cover of the White Pages under the same terms and conditions as BellSouth itself. Although the ordering clause of the decision grants relief only to AT&T, the Order was based squarely on the Authority's interpretation and application of the agency's rule on White Pages directories and therefore, the agency's holding concerning the interpretation of the rule must not be applied only to AT&T but it must equally be applied to all similarly situated carriers that seek the same relief.⁶

By definition, an agency rule is a "statement of general applicability." *See* Tenn. Code Ann. § 4-5-102(10). Consequently, an interpretation of a rule necessarily applies to all similarly situated companies. NEXTLINK is similarly situated to AT&T in that it too is a certificated

⁵ *See* 47 U.S.C. § 271(c)(2)(B)(viii) which provides that any Bell operating company, such as BellSouth, that seeks to enter the long distance market must list the customers of competing local exchange carriers, such as NEXTLINK, in its White Pages directories.

⁶ During argument, counsel for BAPCO acknowledged (Transcript of October 15, 1998, at 33) that the Authority's decision in Docket No. 96-01692 was based on the Authority's interpretation of TRA Rule 1220-4-2-.15. In addition, counsel has also acknowledged that "[w]hy [the Authority] would interpret the rule any differently in this context than [it] had done previously is beyond me." *See* Transcript of October 6, 1998 Authority Conference, at 38.

competing local exchange provider. Moreover, NEXTLINK, is in fact, providing service.⁷ Therefore, since there are no relevant differences between NEXTLINK and AT&T regarding the application of the rule on White Pages directories, no contested case hearing was required on this issue.

3. In the absence of a stay, the Authority's decision in its Declaratory Order remains in effect pending appeal. Under Tennessee law, the filing of a petition for review "does not itself stay enforcement of the agency decision." *See* Tenn. Code Ann. § 4-5-322(c). BAPCO itself concedes that the Declaratory Order is now in effect, at least as it applies to BAPCO and AT&T.⁸ *See* also Transcript of October 15, 1998, at 32. Therefore, the Authority's interpretation of Rule 1220-4-2-.15 is effective and enforceable. *See Underwood v. Liberty Mutual*, 782 S.W.2d 175, 177 (Tenn. 1989) holding that "judgment may continue to be enforced pending an appeal unless a stay is ordered."

4. BAPCO's argument that NEXTLINK's claim is barred by res judicata is not persuasive. Similarly, BAPCO's argument that the Authority cannot now modify the terms of the Declaratory Order has no merit, because NEXTLINK has not asked the Authority to amend its

⁷ See facts officially noticed in attached Exhibit B.

⁸ At the October 6, 1998 Authority Conference, counsel for BAPCO gave the following answer to an inquiry by Chairman Malone concerning what BAPCO's obligations are under the Declaratory Order if AT&T had customers in the White Pages directories and were now seeking the same relief as NEXTLINK:

If AT&T had customers in BAPCO's books, so therefore, under your order was required to be offered an opportunity for the cover, we would have sought a stay from the ruling initially. And if that had been denied, then we would operate under the order. Yes, the answer to your question is yes. If we had sought a stay and it had been denied and we were on appeal and even pending the appeal AT&T sought relief, we would have been required to comply with the order.

Transcript of October 6, 1998, Authority Conference at 49.

Declaratory Order nor is any such modification necessary to grant NEXTLINK's petition. The Declaratory Order interprets and applies the Authority's rule as to White Pages directories and that interpretation necessarily applies to any other, similarly situated carrier covered by that rule.

5. In its Declaratory Order, the Authority directed BAPCO to negotiate with AT&T for "the same terms and conditions" which BAPCO offers to BellSouth. BAPCO acknowledges that no such terms and conditions exist at this time. *See* Transcript of October 15, 1998, at p. 6. BAPCO is therefore obliged to negotiate with NEXTLINK for the opportunity to appear on the cover of the White Pages directories in a size and style comparable to the name and logo of BellSouth.

6. The Authority will not, at this time, impose sanctions against BAPCO as requested by NEXTLINK. It is clear, however, that the Authority has both the right and obligation to enforce TRA Rule 1220-4-2-.15, as interpreted in the Declaratory Order, unless that Order is stayed or reversed.

IT IS THEREFORE ORDERED THAT:

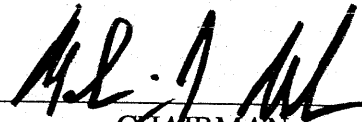
1. Absent a stay, the Authority's interpretation of TRA Rule 1220-4-2-.15 concerning White Pages directories, as stated in the Authority's March 19, 1998, Declaratory Order, remains in effect pending appeal and will be enforced for the benefit of NEXTLINK or any other similarly situated, competitive local exchange carrier seeking to appear on the cover of the White Pages directories published by BellSouth Advertising & Publishing Corporation.

2. BellSouth Advertising & Publishing Corporation is directed to comply with TRA Rule 1220-4-2-.15, as interpreted in the Authority's Declaratory Order entered on March 19, 1998.

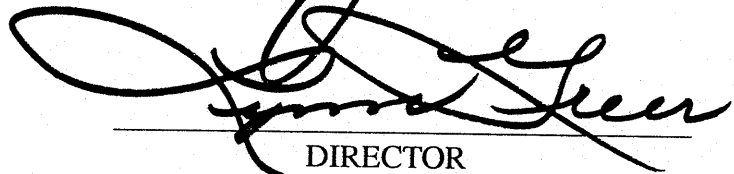
3. NEXTLINK's request for sanctions against BellSouth Advertising & Publishing Corporation is denied at this time.

4. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this order; and

5. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this order.



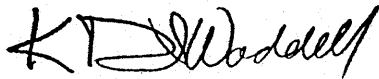
CHAIRMAN



DIRECTOR

DIRECTOR

ATTEST:



EXECUTIVE SECRETARY

*** Director Kyle voted not to support the decision of the majority because the Declaratory Order interpreting TRA Rule 1220-4-2-.15 is currently pending review before the Court of Appeals in Cause No. 0A01-9805-BC-00248.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

March 19, 1998

NASHVILLE, TENNESSEE

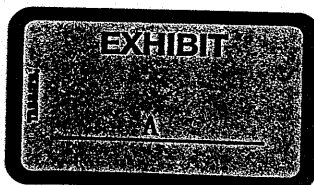
IN RE:

PETITION OF AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC. FOR A DECLARATORY ORDER
AS TO THE APPLICABILITY OF T.C.A. §§ 65-4-104, 65-4-114(1),
65-4-117(3) AND 65-4-122(c), AND RULE 1220-4-2-.15 TO
TELEPHONE DIRECTORIES PUBLISHED AND DISTRIBUTED
ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.
CONTAINING THE NAMES AND TELEPHONE NUMBERS OF
CUSTOMERS OF AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC.

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) Docket No.
) 96-01692
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DECLARATORY ORDER

This matter came before the Tennessee Regulatory Authority (the "Authority") upon the petition of AT&T Communications of the South Central States, Inc. ("AT&T") seeking a declaratory order as to the applicability of Tenn. Code Ann. §§ 65-4-104, 65-4-114(1), 65-4-117(3) and 65-4-122(c), and Authority Rule 1220-4-2-.15 to White pages directory listings published and distributed on behalf of BellSouth Telecommunications, Inc. ("BellSouth") by its affiliate BellSouth Advertising and Publishing Corporation ("BAPCO") containing the names and telephone numbers of customers of AT&T. On July 17, 1997, a hearing in this matter was held before the Directors of the Authority.



Preceding the conduct of the hearing on July 17th, both BellSouth and BAPCO were made parties herein by Order of the Authority dated February 20, 1997¹. In addition, several telecommunications service providers sought intervention in this matter at times well in advance of the hearing, these providers are as follows: MCI Telecommunications, Inc., American Communications Services, Inc., and NEXTLINK Tennessee, L.L.C. ("NEXTLINK"). The foregoing providers were granted intervention by various Orders of the Authority, and were provided with the opportunity to fully participate as parties herein. The Directors of the Authority deliberated upon this matter for a decision on the record in this proceeding at a regularly scheduled Authority Conference on September 23, 1997.

Prior to that Conference, on August 1, 1997, Chairman Greer, filed his Charges of Law to the Directors.² Subsequently, on August 13, 1997, both BellSouth and BAPCO filed objections to the Charges of Law. At the September 23rd Conference, the Directors first considered the objections filed by BellSouth to the charges of law as filed by the Chairman. The Directors voted unanimously to sustain objection numbers four (4) and five (5), but denied the remaining three (3) objections. The Directors also considered the objections filed by BAPCO to the same charges. The Directors voted unanimously to incorporate the portions of charges of law prepared by BAPCO concerning the federal and state constitutional issues, as if stated verbatim, in the charges filed by the Chairman. In so doing, each of the Directors

¹ This Order also appointed Director Melvin Malone to serve in the capacity as the Hearing Officer in order to dispose of pre-hearing matters. Additionally, the Order also required BellSouth and BAPCO to file responses to AT&T's petition within twenty (20) days from the entry of the Order.

² The Charges of Law are used to fulfill the obligation of the presiding agency member acting in the role of Hearing Officer or Administrative Law Judge to advise the remaining agency members as to the law of the case as set forth under Tenn. Code Ann. §4-5-301(b).

independently acknowledged after discussion that they had considered the constitutional issues raised by BAPCO within this proceeding in their preparation for deliberating upon the merits of this matter.³

The Directors then considered NEXTLINK's Motion to Strike Portions of Mr. Barretto's Rebuttal Testimony.⁴ The Directors voted unanimously to deny the motion.

Following the disposition of the pending motions, each Director openly deliberated in great detail on the merits of the case and stated his or her position as to the proper disposition of the issues. After the deliberations were concluded, the motion as stated by Chairman Greer prevailed. The motion and supporting comments are as follows:

As a regulator in Tennessee, I am bound by the parameters of federal law, state law and existing rules of this Agency. However, I am also charged with the duty of promoting telecommunications competition in this state according to the [state and federal] Telecommunications Act[s] of 1995 and 1996,⁵ and with the duties of protecting the interest of both the consumers of Tennessee and the utility providers. Sometimes the fulfillment of all of these duties conflicts, not only with each other but with the applicable laws involved. I feel that the production of one complete phone book containing the names and numbers of all customers, promotes competition, reduces consumer confusion and best serves the needs of Tennessee. I feel this solution of one complete directory fulfills my policy goals and I would encourage this action to be taken by the parties involved.

All of that said, however, I must now determine what I am allowed to do under the law. The original petition brought four (4) statutes and one (1) Tennessee Public Service Commission/TRA rule in question. And I will explore each of these.

³ See Conference Transcript, pp. 54-57.

⁴ See Conference Transcript, p. 57.

⁵ The Tennessee General Assembly enacted the state Telecommunications Act with an effective date of June 6, 1995, while the federal legislation became effective on February 8, 1996.

First, [Tenn. Code Ann. §] 65-4-104 deals with the TRA's jurisdiction over public utilities. The TRA obviously has jurisdiction over BellSouth Telecommunications and the fulfillment of their obligations as a utility. By virtue of contract, then, BAPCO, as BellSouth's agent, becomes responsible for the fulfillment of BellSouth's utility obligations under the law. This is confirmed by Mr. Barretto's testimony on page 212 of the [hearing] transcript. (Emphasis supplied).

[Tenn. Code Ann. §] 65-4-114(1) empowers the Authority to require every public utility to provide safe, adequate and proper service, but it does not require that utility to provide such service to customers other than its own. This statute, then, in my opinion, is not really applicable to this case.

[Tenn. Code Ann. §] 65-4-117(3) enables the Authority, after hearing, by order in writing, to fix just and reasonable standards to be applied to any utility. This statute seems to be envisioning rules, which truly requires a rule-making proceeding. Thus, this statute is not applicable, in my opinion, to this case.⁶

[Tenn. Code Ann. §] 65-4-122(c) mandates that a public utility shall not make or give any undue preference to anyone. However, this statute applies more to the ratepayers than to the utilities, as evidenced in New River Lumber Company versus Tennessee Railway, 1921, thus, this statute is not relevant to this case either.

Now, Tennessee Public Service Commission Rule [TRA Rule] 1220-4-2-.15 mandates that a telephone directory be published regularly containing the names and numbers of all customers and distributed to all customers served by that directory. The directory must have the name of the utility, the area served, and the month and year of issue on the cover. I think this is a good place to mention that I am still confused as to whose name is on the cover of the current BellSouth directory. Mr. Barretto, in testimony on page 202 and 208-209 of the transcript, claims that the name on the cover is BAPCO and not BellSouth Telecommunications. If this is true, then BellSouth Telecommunications is in violation of Rule 1220-4-2-.15, as further described in Mr. Barretto's testimony on pages 144 and 145 of the transcript. I find Mr. Barretto's testimony disturbing in that it appears that BellSouth and BAPCO are using the BellSouth logo to suit their own purposes and not for the purpose specifically stipulated in the Rule.

⁶ In his deliberative comments, Director Malone noted that under Tenn. Code Ann. § 65-4-117(3), it was questionable as to whether the fixing of standards, regulations, practices or services imposed on a public utility which are generally applicable can be legally imposed when emanating from a contested case. (See Conference Transcript, p. 82).

I have been charged with the interpretation of this rule in resolving this issue. I feel that it is important to note that this rule was created in 1968, long before the 1996 Telecommunications Act and the push for competition. Keeping this in mind, and realizing that no more than one utility existed at the time of this statute to address, I believe that the plain language of the rule envisions the name and utility whose customers are inside the directory. Following the same logic, then, I believe that if more than one utility's customers are inside the same directory, then more than one utility's name would be on the cover. I do not believe I have the authority to allow a telephone book with no name on the cover.

The charges of law in this docket bring another important statute into focus, and that is [Tenn. Code Ann. §] 65-4-123. This statute discusses not only the policy of this state to permit competition in all telecom services markets, but also that this regulation shall protect the interest of the consumers. **This Agency has ruled that directory assistance is not a basic service for Tennessee consumers,⁷ therefore, in my opinion, the white pages listing is a basic service and an essential tool the customer needs to efficiently and fairly use the network.** This telephone directory, then, needs to be complete and as easy to understand as possible. In my opinion, the names of local providers on the cover would be helpful to consumers. This would not only serve as information, but would also promote competition by showing consumers they have a choice in service providers. This method also allows small companies to continue to provide service without the financial burden of having to produce their own directory. They may contract with another carrier or publisher to satisfy their TRA Rule requirements and still have their name on the cover of the directory. (Emphasis supplied).

Therefore, after reading all of the testimony and briefs filed in this docket, and after a hearing on the merits, and after contemplation of both my duties as a regulator and my interpretation of the applicable rules and the statutes, I feel that the name or names of the utility or utilities, whose customers are inside the directory, by contract, should be allowed to be included in the cover in the same format. So, if a carrier contracts with another carrier or publisher to have their customers included in a combined directory, then the included carrier

⁷ This decision was made by a majority of the Directors in the matter of: *United Telephone-Southeast, Inc. Tariff No. 96-201 to Reflect Annual Price Cap Adjustment (Docket No. 96-01423)* and is discussed in the Authority's Order dated September 4, 1997. The majority in making the finding that directory assistance was not a basic service under Tenn. Code Ann. § 65-5-208(a) relied upon the legislative history surrounding the enactment of that statutory section. Director Kyle voted not to support the majority's finding concerning the directory assistance issue.

should have its name on the directory cover in a like format. **Thus, I move that AT&T be allowed to contract with BAPCO to have its name on the cover of the directory under the same terms and conditions as that of BellSouth's name. And further, BAPCO and/or BellSouth must offer the same terms and conditions to AT&T in a just and reasonable manner.** (Emphasis supplied). (See Conference Transcript, pp. 58-63).

Director Kyle seconded Chairman Greer's motion. (See Conference Transcript, pp. 73, 84).⁸ Director Malone voted no, stating that while he agreed with the results, he thought this matter should have been concluded through a rulemaking procedure. (See Conference Transcript, pp. 85-86).⁹

⁸ Both Chairman Greer and Director Kyle agreed that Authority Rule 1220-4-2-.15 applied to this case. That Rule, entitled "Directories - Alphabetical Listing (White Pages)," provides in pertinent part as follows:

- (1) Telephone directories shall be regularly published, listing the names, address, and telephone number of all customers, except public telephones and numbers unlisted at customer's request.
- (2) Upon issuance, a copy of each directory shall be distributed to all customers served by that directory and a copy shall be furnished to the Commission [Authority] upon request.
- (3) **The name of the telephone utility, the area included in the directory and the month of year of issue shall appear on the front cover.** Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages. (Emphasis supplied).

⁹ In addition, Director Malone stated as follows:

As noted earlier, the Rule was promulgated in 1968. . . Therefore, given the time period of this promulgation and the passage of the 1995 Act, the Rule logically, it appears, only applies to the areas of the State in which a monopoly environment, as existed when the Rule was enacted, has remained intact.

See Conference Transcript, pp. 80-81.

On the basis of the foregoing statements and actions of the Directors, and on consideration of the entire record in this case, a majority of the Directors find and conclude that:

1. BellSouth is a public utility within the meaning of Tenn. Code Ann. § 65-4-101, providing telecommunications services, including local exchange telephone services, in Tennessee as a telecommunications service provider.

2. Pursuant to Tenn. Code Ann. § 65-4-104, the Authority has general supervisory and regulatory powers, and has jurisdiction and control over the public utilities that were parties to this proceeding, and over their property, property rights and facilities for the purpose of carrying out the provisions of Chapter 4 of Title 65.

3. In Chapter 408 of the Public Acts of 1995, now codified as Tenn. Code Ann. § 65-4-123, the Tennessee General Assembly adopted a new declaration of telecommunications services policy, and the Authority is to be governed by that policy in the exercise of its powers and duties with respect to telecommunications services and providers.

4. BellSouth has the duty to provide basic White pages directory listings in compliance with Tennessee law, including Authority Rule 1220-4-2-.15. BellSouth, by contract, has delegated the performance of that duty to its affiliate BAPCO with respect to basic White pages directory listings covering its local telephone service.

5. To the extent BAPCO acts for and on behalf of BellSouth in providing the publication of basic White pages directory listings in Tennessee, those directories must comply with the rules and directives of the Authority.

6. The name "BellSouth" and the Bell logo as they appear on the covers of basic White pages directory listings published by BAPCO on behalf of BellSouth in Tennessee are understood to refer to the local incumbent telephone company, BellSouth.

7. Finally, Section 271(c)(2)(B)(viii) of the Federal Telecommunications Act of 1996 provides that any Bell operating company, such as BellSouth, that seeks to enter the long distance market must list customers of competing local exchange carriers, such as AT&T, in its White pages directory listings.

Based on the findings of fact and conclusions of law and the entire record in this case, a majority of the Directors declare that BAPCO, in the publication of basic White pages directory listings on behalf of BellSouth, is required to comply with the directives of the Authority and the provisions of Authority Rule 1220-4-2-.15.¹⁰ Further, in the publication of these directory listings on behalf of BellSouth which contain the listings of local telephone customers of AT&T and other competing local exchange providers, BAPCO must provide the opportunity to AT&T to contract with BAPCO for the appearance of AT&T's name and logo on the cover of such directories under the same terms and conditions as BAPCO provides to BellSouth by contract. Likewise, BAPCO must offer the same terms and conditions to AT&T in a just and reasonable manner.

¹⁰ Although BAPCO is not a public utility, by virtue of BAPCO's contract (of record in this case) with BellSouth regarding the publication of basic White pages directory listings, to the extent that BAPCO acts on behalf of BellSouth in providing such directories, BAPCO is bound by this declaratory order.

IT IS THEREFORE ORDERED THAT:

1. BAPCO, in the publication of White pages directory listings on behalf of BellSouth is required to comply with the directives of the Authority and the provisions of Authority Rule 1220-4-2-.15. Further, in the publication of these directory listings on behalf of BellSouth which contain the listings of local telephone customers of AT&T and other competing local exchange providers, BAPCO must provide the opportunity to AT&T to contract with BAPCO for the appearance of AT&T's name and logo on the cover of such directories under the same terms and conditions as BAPCO provides to BellSouth by contract. Likewise, BAPCO must offer the same terms and conditions to AT&T in a just and reasonable manner.

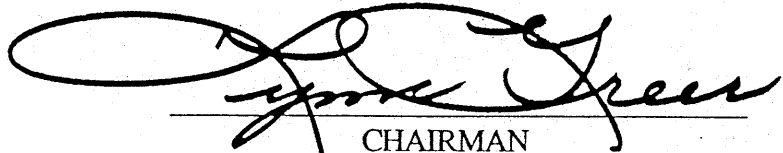
2. Objection numbers four (4) and five (5) to the Charges of Law as filed by BellSouth be sustained, and that the remaining three (3) objections be hereby denied.

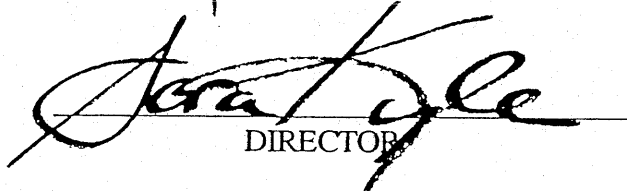
3 BAPCO's objections to the Charges of Law concerning the federal and state constitutional issues be sustained, and the Charges of Law filed by the Chairman be and hereby the same amended to incorporate BAPCO's proposed language with respect to those issues as though stated verbatim therein.

4. NEXTLINK's Motion to Strike the Rebuttal Testimony of Mr. Barretto be denied.

5. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this order; and

6. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this order.


CHAIRMAN


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY

DIRECTOR

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

**IN RE: PETITION OF AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC. FOR DECLARATORY ORDER AS TO
THE APPLICABILITY OF T.C.A. §§ 65-4-114(1), 65-4-117(3) AND
65-4-122(C) AND RULE 1220-4-2-.15 TO TELEPHONE
DIRECTORIES PUBLISHED AND DISTRIBUTED ON BEHALF
OF BELL SOUTH TELECOMMUNICATIONS, INC. CONTAINING
THE NAMES AND TELEPHONE NUMBER OF CUSTOMERS OF
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL
STATES, INC.**

Docket No. 96-01692

SEPARATE OPINION OF DIRECTOR MELVIN MALONE

Like the majority, I too am convinced that the Tennessee General Assembly's policy, as set forth in T.C.A. § 65-4-123, to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets requires, at this stage, that the front cover of the local white pages phone directory published by or on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), which includes the names and numbers of AT&T Communications of the South Central States, Inc.'s ("AT&T") customers, should include the name and logo of AT&T in like manner to the name and logo of BellSouth. Thus, I agree with the ultimate result of the decision of the majority in this case. —Nonetheless, I write separately because I would reach the same substantive result by a different path.

In this declaratory order action, AT&T has requested that the Authority issue a declaratory ruling on whether T.C.A. §§ 65-4-104, 65-4-114(1), 65-4-117(3), 65-4-122(c), or TRA Rule 1220-4-2-.15 require BellSouth to place AT&T's name and logo on the front cover of the local directory that is published by BellSouth Advertising and Publishing Company ("BAPCO") on behalf of BellSouth.

Consistent with the majority, in my opinion, this case turns upon the application of the Rule, as opposed to other state statutes relied upon by AT&T in this cause. The plain language of TRA Rule 1220-4-2-.15 mandates that "the name of the telephone utility" must appear on the front cover of the local phone directory.¹ The controlling question here is whether the Rule requires BellSouth to place AT&T's name and logo on the cover of BellSouth's local phone directory, or the local phone directory published on its behalf, when AT&T's customers are listed in said directory.

Unlike the majority, however, I have concluded that applying the plain language of the Rule, irrespective of its original intent and purpose, in the current environment would result in each local telecommunications services provider distributing or providing, directly or indirectly, its own phone book with its name on the front cover to its customers. No law was submitted nor phalanx of language offered in this case that resulted in a metamorphic effect on the plain meaning

¹ TRA Rule 1220-4-2-.15, which has been in effect since 1968, provides in part that:

(1) Telephone directories shall be regularly published, listing the name; address and telephone number of all customers[.]

(2) Upon issuance, a copy of each directory shall be distributed to all customers served by that directory and a copy of each directory shall be furnished to the Commission upon request.

(3) The name of the telephone utility, the area included in the directory and the month and year of issue shall appear on the front cover. (emphasis added).

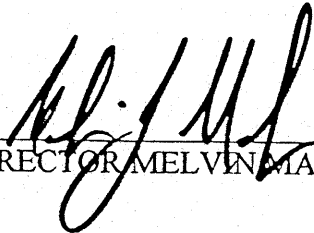
or intent of the Rule into anything other than what it is. Nonetheless, I am persuaded that the imposition of such a daunting requirement as would be mandated by the plain language of the Rule and its original intent at this stage in Tennessee's transition to a competitive environment may result in crippling consequences to the development of competition.

For the foregoing and other reasons, I have concluded that the most appropriate path in this case is to declare that neither the Rule nor §§ 65-4-114(1), 65-4-117(3), or 65-4-122(c) require BellSouth to place AT&T's name and logo on the front cover of the local directory published by BAPCO on behalf of BellSouth when AT&T's customers are listed therein.² Being ever mindful of the clear and unambiguous policy of the State of Tennessee to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets and this agency's general supervisory and regulatory power, jurisdiction, and control under § 65-4-104, I am persuaded that the most judicious manner in which to proceed is with a rulemaking to revise TRA Rule 1220-4-2-.15 and/or to develop a rule to apply in a competitive environment.³

² With respect to the other statutes upon which AT&T requested a declaratory ruling in this case, namely §§ 65-4-114(1), 65-4-117(3) and 65-4-122(c), I am not convinced that they support AT&T's position. In considering the applicability of § 65-4-114(1), there simply is not enough support in the evidentiary record to conclude that a failure to grant the petitioner's request violates this statute. For instance, little was presented to persuade me that BellSouth's services would not be safe, adequate, or proper unless the petition was granted. With regard to § 65-4-117(3), nothing was presented to support a declaratory order action. This statute, in my opinion, is absent any language that would support the relief sought in a declaratory order. Additionally, it is doubtful as to whether the fixing of standards, regulations, practices, or services imposed on a public utility which are generally applicable can be legally imposed when emanating out of a contested case proceeding. Further, as concerning § 65-4-122(c), assuming that this statute is applicable, I have concluded that there is insufficient evidence in the record to support a determination that this statute requires the result sought by AT&T. In order to make a finding of unreasonable preference or advantage, the Authority must be presented with sufficient evidence to support the same. While many allegations, speculative statements and conclusory claims were put forth at the hearing, in my opinion, neither AT&T or the intervenors, separately or in combination, produced adequate evidence upon which this Authority could reasonably find an unreasonable preference or advantage under § 65-4-122(c).

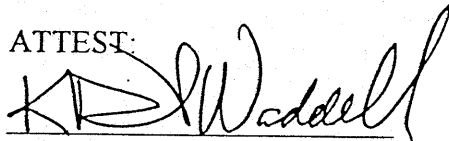
³ In my opinion, neither § 65-4-124(c) nor the Rule address pure yellow page directories. Moreover, I have concluded that none of the other state laws cited by AT&T mandate its request with respect to pure yellow page directories. Except that in circumstances where the yellow page directory is combined with the white page directory in a single volume, that single volume directory will be treated as a white page directory.

Hence, while I conclude that the path that I would choose to resolve this matter is more appropriate than that chosen by the majority, the result is the same - all competitors' names on the front cover of BellSouth's local phone directory.



DIRECTOR MELVIN MALONE

ATTEST:



EXECUTIVE SECRETARY

TENNESSEE REGULATORY AUTHORITY

Melvin Malone, Chairman
Lynn Greer, Director
Sara Kyle, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

October 16, 1998

Mr. Guilford Thornton, Esq.
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424 Church Street, Suite 2800
Nashville, Tennessee 37219

Mr. Henry Walker, Esq.
Boult, Cummings, Conners & Berry PLC
414 Union Street, Suite 1600
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In Re: Official Notice in Docket No. 98-00654

Dear Messrs. Thornton and Walker:

This is to advise you that the Directors of the Tennessee Regulatory Authority desire to take official notice of the following facts contained in the records of other proceedings pending before the agency.

1. That on September 29, 1995, an order was entered granting NEXTLINK of Tennessee, L.L.C. ("NEXTLINK") authority to operate as a competitive local exchange provider of intrastate telecommunications services by the Tennessee Public Service Commission ("TPSC") under NEXTLINK's former corporate name Signal Communications, L.L.C. in Docket No. 95-02502 (a copy of the order is attached hereto as "Attachment A");
2. That on April 12, 1996, the TPSC entered an order granting the petition of Signal Communications, L.L.C. authority to change its corporate name to NEXTLINK of Tennessee, L.L.C. in Docket No. 96-00728 (a copy of the order is attached hereto as "Attachment B");

Telephone (615) 741-5015

Facsimile (615) 741-5015



3. That NEXTLINK directly competes with BellSouth Telecommunications, Inc. by providing facilities based telecommunications services to business customers in Nashville and Memphis, Tennessee. (See pages 2-3 of Direct and Rebuttal Testimony of Russell Land filed on behalf of NEXTLINK and also hearing testimony of R. Gregory Breetz at Vol. VIII B, pages 112-113 of May 14, 1998, Hearing Transcript from TRA Docket No. 97-00309). (Copies of this testimony are attached hereto as "Attachment C"); and

4. That NEXTLINK's business customer's names and listings have been and currently are included in BellSouth White Pages directories published by BellSouth Advertising and Publishing Company. (See pages 22-23 of Direct Testimony of Lisa Dickinson on behalf of NEXTLINK and also Vol. XI A, pages 10-11 of May 15, 1998, Hearing Transcript from TRA Docket No. 97-00309). (Copies of this testimony are attached hereto as "Attachment D").

The Directors of the Authority are taking official notice of the above stated facts pursuant to the terms of Tenn. Code Ann. § 4-5-313(6), which provides in pertinent part as follows:

(6) Official notice may be taken of:

(A) Any fact that could be judicially noticed in the courts of this state;

(B) The record of other proceedings before the agency;

(C) Technical or scientific matters within the agency's specialized knowledge; and

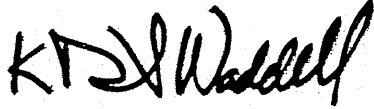
(D) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed. (Emphasis supplied).

As parties to this docket, you may contest and rebut the facts noticed by the Directors. Please provide any written comments concerning the facts noticed herein no later than

12:00 p.m. on Monday, October 19, 1998. Any such comments filed by the parties will be considered by the Directors immediately following the regularly scheduled Authority Conference on October 20, 1998.

Sincerely,

A handwritten signature in black ink, appearing to read "K. David Waddell". The signature is stylized with a large, looped "K" and a cursive "Waddell".

K. David Waddell
Executive Secretary

cc: Chairman Melvin Malone
Director Lynn Greer
Director Sara Kyle

**BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee**

September 29, 1995

IN RE: APPLICATION OF SIGNAL COMMUNICATIONS OF TENNESSEE,
 L.L.C., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
 NECESSITY TO PROVIDE COMPETITIVE TELECOMMUNICATIONS
 SERVICES WITHIN THE STATE OF TENNESSEE

DOCKET NO. 95-02502

ORDER

This matter is before the Tennessee Public Service Commission upon the petition of Signal Communications of Tennessee, L.L.C. (the "Petitioner") for a Certificate of Convenience and Necessity as a competing local telecommunications service provider on a statewide basis. In addition, the Petitioner requests that the Commission approve a franchise granted by the Metropolitan Government of Nashville, Davidson County, on October 18, 1994, and the City of Memphis, on October 27, 1992. The Petitioner does not seek authority to service telephone subscribers in areas served by local exchange companies with fewer than 100,000 total access lines in this state or areas served by any cooperatives.

This matter was set for hearing and heard on Tuesday, June 27, 1995, before Chairman Keith Bissell, Commissioner Steve Hewlett, and Commissioner Sara Kyle. At that time the following appearances were entered:

APPEARANCES:

KENNETH M. BRYANT, and AMANDA HAYNES YOUNG, Trabue, Sturdivant & DeWitt, 511 Union Street, Suite 2500, Nashville, TN 37219 and ELIZABETH BERRY, Attorney at Law, 200 Fourth Avenue, North, Mezzanine, Nashville, TN 37219, appearing on behalf of the applicant.

CHARLES HOWORTH, General Counsel, South Central Bell Telephone Company, 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300 and JACQUE SHAIA, Attorney at Law, South Central Bell Telephone, 3535 Colonnade Parkway, Birmingham, AL 35203, appearing on behalf of the Intervenor, South Central Bell Telephone Company, Inc.

ATTACHMENT A

T. G. PAPPAS and JOE WELLBORN, Bass, Berry & Sims, 2800 First American Center, Nashville, TN 37201-3300, appearing on behalf of Tennessee Telephone Company, et al.

MARTHA McMILLIN, Attorney at Law, MCI Telecommunications Corp., 780 Johnson Ferry Road, Suite 700, Atlanta, GA 39342, appearing on behalf of MCI Telecommunications Corp.

D. BILLYE SANDERS, Attorney at Law, Waller, Lansden, Dortch & Davis, 511 Union Street, Suite 2100, Nashville, TN 37219, appearing on behalf of Sprint Communications Company, L.P.

VINCENT WILLIAMS and DAVID YATES, Consumer Advocate, 450 James Robertson Parkway, Nashville, TN 37243, appearing on behalf of the Consumer Advocate Division, Attorney General's Office.

VAL SANFORD, Attorney at Law, Gullett, Sanford, Robinson & Martin, P. O. Box 198888, Nashville, TN 37219-8888, appearing on behalf of AVR, L.P., d/b/a Hyperion of Tennessee, L.P.

JOHN KENNEDY, Metropolitan Government, Metro Court House, Room 204, Nashville, TN 37201, appearing on behalf of Metropolitan Government.

JEANNE MORAN, General Utility Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, TN 37243-0505, appearing on behalf of the Commission Staff.

The Commission heard testimony from J. Scott Bonney, Vice President of Signal Communications of Tennessee, L.L.C. Upon conclusion of the proof in this case, the Commission granted the authority requested by the Petitioner and approved the local franchises submitted by the Petitioner for the reasons discussed herein.

FINDINGS OF FACT

1. Signal Communications of Tennessee, L.L.C. ("Signal") is qualified to do business in Tennessee and is headquartered at 1262 Old Hillsboro Road, Franklin, Tennessee 37064.
2. Signal is an experienced telecommunication provider and has been involved in opening up other local telephone markets to competition.
3. Signal's management team has significant management experience with other local telephone companies, cellular phone companies and long distance providers.

4. Signal is supported financially and managerially by FiberLink which is located in Kirkland, Washington. Craig McCaw is the principal owner of FiberLink and Signal.

5. Signal has been granted franchises by the Metropolitan Government, Nashville, Davidson County and by the City of Memphis.

6. Signal is presently operating under its franchises in both Nashville and Memphis serving presently approximately 750 customers.

7. Signal has a 200 mile fiber-optic network designed for voice, data and video services with 33 sonet rings consisting of 14 node sites in Memphis, Tennessee.

8. Signal has begun construction in Nashville installing its first phase of seventy-five miles of fiber-optic lines and has plans of completing that phase in the Fall of 1995. Signal has plans for a second phase consisting of an additional 170 miles of fiber. Signal also plans to locate a switch facility in Nashville.

9. Signal will offer a complete array of telecommunications services including local exchange services provided by other full service, local exchange telephone companies.

10. Signal will comply with all applicable Commission rules, policies, and orders.

CONCLUSIONS OF LAW

The Commission finds pursuant to Chapter 408 of the Public Acts of 1995 of the Tennessee General Assembly, that Signal Communications of Tennessee, L.L.C., has demonstrated that it will adhere to all Commission policies, rules and orders and possesses sufficient managerial, financial and technical abilities to provide telecommunication services on a statewide basis.

IT IS THEREFORE ORDERED:


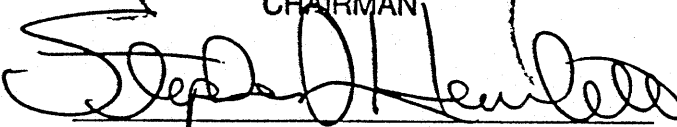
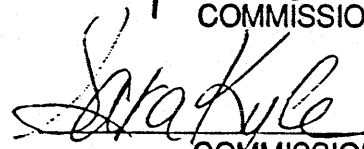
1. That the petition of Signal Communications of Tennessee, L.L.C., is hereby granted for a Certificate of Convenience and Necessity to provide local telecommunication services on a statewide basis;

2. That the franchises granted to Signal Communications of Tennessee, L.L.C., to operate a competitive telecommunications service in the counties of Davidson and Shelby are hereby approved, but for only those areas presently served by Local Exchange Telephone Service Providers authorized to serve 100,000 or more access lines;

3. That Signal Communications of Tennessee, L.L.C., may commence service under this certificate immediately upon approval of tariffs for services to be offered and upon compliance with all applicable Commission rules and regulations;

4. That any party aggrieved with the Commission's decision in this matter may file a Petition to Reconsider with the Commission within ten (10) days from and after the date of this Order;

5. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:


EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE

April 12, 1996

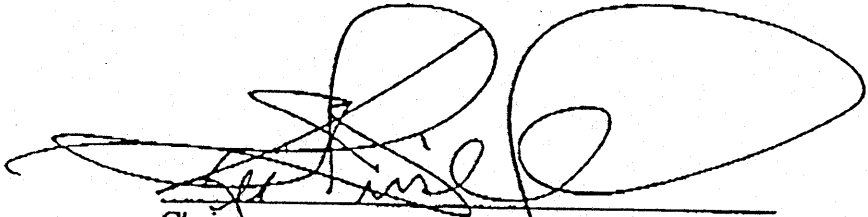
IN RE: PETITION OF SIGNAL COMMUNICATIONS OF TENNESSEE L.L.C. TO
AMEND ITS CERTIFICATE TO REFLECT A NAME CHANGE

DOCKET NO. 96- 00728

ORDER

Upon the Petition of Signal Communications of Tennessee, L.L.C., the Commission finds that the petitioner has changed its corporate name to NEXTLINK Tennessee, L.L.C., effective January 8, 1996. The Commission therefore directs that Signal's intrastate certificate, issued September 29, 1995, Docket No. 95-02502, and the carrier's intrastate tariffs be amended to reflect the name change.

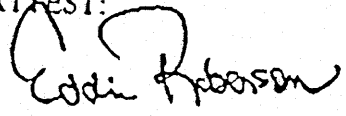
It is so ordered.


Chairman


Commissioner


Commissioner

ATTEST:


Executive Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 97-00309

Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

DIRECT AND REBUTTAL TESTIMONY OF RUSSELL LAND
ON BEHALF OF NEXTLINK TENNESSEE, L.L.C.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH NEXTLINK TENNESSEE, L.L.C.

A. My name is Russell Land. I am Vice President of Engineering and Operations with NEXTLINK Tennessee, L.L.C. ("NEXTLINK").

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I am a registered professional engineer with twenty-five years of engineering experience and a degree in electrical engineering from the Georgia Institute of Technology. Before joining NEXTLINK, I was Partner and Vice-President of MCMG, Inc., and a Director of Engineering for the Southeast Region of McCaw Cellular Communications, Inc. and for Continental Cablevision Cellular, Inc.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to describe some of the ways in which BellSouth Telecommunications, Inc. (~~BellSouth~~) ~~has discriminated against NEXTLINK in~~ providing interconnection and access to unbundled network elements. I will discuss the technical impediments imposed by BellSouth upon NEXTLINK that limit NEXTLINK in its ability to compete with BellSouth. I will also discuss problems with the quality of the unbundled loops and other network elements BellSouth provides to NEXTLINK.

Q. PLEASE PROVIDE AN OVERVIEW OF NEXTLINK'S OPERATIONS IN TENNESSEE.

A. NEXTLINK was one of the first facilities-based competitive local exchange carriers ("CLEC") to offer service in Tennessee. In early 1995, NEXTLINK began offering dedicated private line services, long-distance carrier access services, high speed data transmission and video conferencing services in Tennessee. After the passage of the Telecommunications Act of 1996, NEXTLINK began switched local and long-distance services in both Memphis and Nashville starting on July 4, 1996. NEXTLINK has Nortel DMS 500 switches in both Nashville and Memphis. Its network covers the greater Nashville and Memphis areas with over 400 route miles of high capacity fiber. NEXTLINK and BellSouth are interconnected at the BellSouth access tandems in both the Memphis and Nashville LATAs and have also recently established interconnection arrangements at a few end offices in both cities. In addition, NEXTLINK has facilities that are physically collocated at thirteen BellSouth central offices. Requests

to BellSouth for physical collocation at three additional central offices are now in process.

Most of the access lines served by NEXTLINK in Tennessee are used by small business customers. The majority of these customers once used BellSouth for local and intraLATA long distance service.

Unlike some other facilities-based providers which concentrate their facilities in a downtown core, NEXTLINK's network directly connects to customer locations over a wide geographic area. Nevertheless, it would be extremely time-consuming and costly for NEXTLINK to build facilities that could reach all potential customers within its service area. When a customer not directly connected to the NEXTLINK network requests service from NEXTLINK, NEXTLINK must purchase unbundled loop facilities from BellSouth to make the final connection to the customer's location. These existing loops go from the customer's location to the BellSouth central office that serves that location. NEXTLINK connects to the customer's loop through NEXTLINK equipment that is collocated in the BellSouth central office. The customer's calls are then transported from BellSouth's central office to NEXTLINK's switch for processing.

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[1] targeted performance standards and benchmarks, coupled
[2] with practical and meaningful remedies if BellSouth
[3] should violate them. Adherence to these performance
[4] standards and remedies should be deemed a prerequisite
[5] to consideration of BellSouth's request to enter the
[6] long distance market in Tennessee. Otherwise, the
[7] Authority will lack the tools necessary to ensure that
[8] any progress in opening the local market to competition
[9] is irreversible.

[10] Without benchmarks, NEXTLINK and the
[11] Authority will not have the information they need to
[12] determine if BellSouth is meeting its obligations to
[13] treat competitors on terms equal to its own retail
[14] operations. Without remedies, even if discriminatory
[15] treatment is detected, there will be no way to deter
[16] it.

[17] My experience with BellSouth has proven
[18] that there are a multitude of ways, both deliberate and
[19] inadvertent, that Bell can hamper competition. This
[20] Authority must ensure that this does not occur, and the
[21] only way to ensure this is to have a good way to
[22] measure the performance of BellSouth's retail
[23] operations. These results then need to be compared to
[24] the CLECs, and the CLECs' results should be compared to
[25] one another and eventually compared to industry

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[1] CHAIRMAN GREER: Mr. Lamoureux.
[2] MR. LAMOUREUX: I have one question.

[4] CROSS-EXAMINATION

[5] BY MR. LAMOUREUX:

[6] Q. Mr. Breetz, there was some cross of
[7] Mr. Falcone yesterday dealing with the issue that he
[8] referred to as the platform and the implications of
[9] that for facilities-based providers such as NEXTLINK.
[10] And I was curious what NEXTLINK's position is on that
[11] issue.

[12] A. I don't know that I can speak for exactly
[13] what NEXTLINK's position would be as a company. I can
[14] certainly address what my feelings are and how we may
[15] or may not use that in Tennessee.

[16] It's certainly -- and this is -- yesterday
[17] was the first time I had seen or heard about that type
[18] of proposal. And it certainly seems like it would be a
[19] viable way to jump-start competition throughout the
[20] state.

[21] Q. Would NEXTLINK be interested in employing
[22] such a proposal or such a process?

[23] A. I think there are certainly some
[24] circumstances where we would.

[25] MR. LAMOUREUX: I have no further

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[1] standards which will develop over time.
[2] It is important to understand that
[3] benchmarks and remedies will become even more important
[4] if BellSouth receives Section 271 relief in the future.
[5] Today BellSouth has some incentives not to discriminate
[6] against NEXTLINK in order to get the relief it seeks.
[7] However, once relief is given, there will need to be a
[8] vehicle in place to ensure and prevent BellSouth from
[9] backsliding.

[10] That concludes my testimony -- or my
[11] summary.

[12] MR. CAMPEN: Mr. Chairman, the witness
[13] is available for cross.

[14] CHAIRMAN GREER: Did you move his
[15] testimony into the record?

[16] MR. CAMPEN: No, I didn't. And thank
[17] you for reminding me.

[18] We would move that into the record.

[19] CHAIRMAN GREER: Without objection, so
[20] ordered.

[21]
[22] (Prefiled direct and rebuttal testimony
[23] of R. Gregory Breetz, Jr. is inserted
[24] into transcript as if read.)
[25]

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[1] questions.

[2] CHAIRMAN GREER: Mr. O'Roark.
[3] MR. O'ROARK: MCI has no questions.
[4] CHAIRMAN GREER: Ms. Roddy.
[5] MS. RODDY: No questions.
[6] CHAIRMAN GREER: Mr. Broemel.

[8] CROSS-EXAMINATION

[9] BY MR. BROEMEL:

[10] Q. I'm Vance Broemel with the Consumer
[11] Advocate.

[12] Is your company providing both business and
[13] residential service in Tennessee?

[14] A. No, sir. Today we're providing business
[15] service only.

[16] Q. Now, in providing business service, is that
[17] primarily through use of your own facilities or
[18] unbundled network elements?

[19] A. It's through both. I would say primarily
[20] it's with the use of BellSouth network elements. And
[21] let me jump back to the previous question you asked to
[22] make sure I answered that the best way I could.

[23] We have not -- NEXTLINK has not
[24] differentiated between residential rates and business
[25] rates. We have, you know, a rate that is available to

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- [1] everyone. It's just that at this time the only people
 [2] who have come forth to use us have been businesses.
 [3] Q. Now, do you plan to offer residential
 [4] service in Tennessee?
 [5] A. There are no current plans to do that.
 [6] And, really, it's going to become a pricing issue.
 [7] Q. Now, so that's the reason why you're not
 [8] providing residential service; you believe it's a
 [9] pricing issue?
 [10] A. Yes, sir.
 [11] Q. Is that the only reason?
 [12] A. That's correct.
 [13] Q. Now, does your company offer service
 [14] throughout BellSouth's area in Tennessee?
 [15] A. No, sir. We currently only offer service
 [16] in Nashville and the immediate area and in Memphis.
 [17] Q. Okay. Now, do you have any plans to expand
 [18] to other areas?
 [19] A. There's nothing that's -- within Tennessee?
 [20] Q. Yes.
 [21] A. There's nothing definite. However,
 [22] certainly the game plan will be for us to at some point
 [23] in time provide service throughout the entire state.
 [24] Q. Is your company -- well, I want to talk
 [25] about performance measures now.

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- [1] BellSouth.
 [2] Q. Okay. Does BellSouth provide your company
 [3] information on the status of orders?
 [4] A. To the best of my knowledge, no, sir.
 [5] Q. Okay.
 [6] A. Let me -- let me rephrase that.
 [7] If you're referring to some of the
 [8] testimony that suggested that we saw things in writing
 [9] well in advance of, you know, a missed appointment, we
 [10] don't see anything. It is not uncommon for us to be
 [11] told the day of the cut, the hour before the cut, or at
 [12] the time of the cut that, oh, this isn't going to work
 [13] today.
 [14] Q. Now, you've given some information, but
 [15] could you sum it up about what information your company
 [16] needs that it's not being provided about that status of
 [17] orders?
 [18] A. It puts us between a rock and a hard place
 [19] when we've coordinated with our customer and
 [20] potentially the customer's coordinated with their
 [21] vendor and certainly with their own internal employees
 [22] to plan the cut, and then we don't find out until just
 [23] moments beforehand that it was a -- you know, everyone
 [24] has kind of rushed to get to the dance, and there's not
 [25] gonna be a dance.

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- [1] You are using electronic interfaces to
 [2] connect with BellSouth's OSS, or not?
 [3] A. No, sir, that's not correct.
 [4] Q. What about your experience with orders
 [5] being rejected? Do you have any --
 [6] A. I don't have any kind of statistics that we
 [7] can look at, no, sir.
 [8] Q. So you couldn't say what percentage of them
 [9] are being rejected?
 [10] A. I could not.
 [11] Q. Is that something you plan to keep in the
 [12] future? What is the reason you haven't kept those
 [13] statistics?
 [14] A. When we began offering service in July of
 [15] 1996, there were no interfaces available for us to use
 [16] with BellSouth that we were aware of. So we kind of
 [17] headed down the path of building some interim solutions
 [18] that would allow us to become the first really
 [19] facilities-based provider of alternative local service
 [20] here in Tennessee. And we are now in the process of
 [21] building some new systems that will support not only
 [22] Tennessee but our nationwide operations. So once those
 [23] are built, they should provide us with a lot better
 [24] reporting mechanisms and the ability to use the API
 [25] interface to connect directly electronically with

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- [1] So I think the only thing we've
 [2] traditionally been asking for is just more timely
 [3] notification of when these kinds of problems are gonna
 [4] occur.
 [5] Q. And has there been any movement toward
 [6] improvement in that area?
 [7] A. Not that we've been able to determine.
 [8] Q. Okay. Has your company -- or -- yeah, or
 [9] have you reviewed the performance measures proposed by
 [10] the FCC in its notice of proposed rulemaking?
 [11] A. No, sir.
 [12] Q. Now, with regard to the SGAT, have you
 [13] reviewed this SGAT, this part of your testimony here?
 [14] A. No, sir. I have reviewed bits and pieces
 [15] of it, but traditionally we've had a separate
 [16] negotiated interconnection agreement with BellSouth and
 [17] have not ordered services out of the SGAT.
 [18] Q. So do you have any testimony on what you
 [19] feel or claim to be deficiencies in the SGAT? You're
 [20] not giving testimony on that?
 [21] A. No, sir.
 [22] MR. BROEMEL: Okay. No further
 [23] questions.
 [24] CHAIRMAN GREER: Mr. Baltimore.
 [25] MR. BALTIMORE: No questions.

NEXTLINK TENNESSEE, LLC
TRA DOCKET NO. 97-00309
DIRECT TESTIMONY OF LISA DICKINSON

ATTACHMENT D

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 97-00309

Re: *BellSouth Telecommunications, Inc's Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

DIRECT AND REBUTTAL TESTIMONY OF LISA DICKINSON
ON BEHALF OF NEXTLINK TENNESSEE, L.L.C.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH
NEXTLINK TENNESSEE, L.L.C.

A. My name is Lisa Dickinson. I am a Regional Customer Care Manager with
NEXTLINK Tennessee, L.L.C. ("NEXTLINK"). I have been employed by
NEXTLINK since August, 1995, and am responsible for ensuring that
NEXTLINK provides quality service to its customers throughout Tennessee and
NEXTLINK's Southeast Region.

Q. WHAT IS NEXTLINK?

A. NEXTLINK is a facilities-based competitive local exchange carrier ("CLEC"). It
uses unbundled loops and other network elements and services purchased from
BellSouth in conjunction with its own fiber network and state of the art switches
to provide local exchange service in competition with BellSouth.

Q. YOU HAVE INDICATED THAT BELL SOUTH HAS A CONTRACTUAL COMMITMENT TO COMPLETE A SCHEDULED CUTOVER WITHIN ONE HOUR. DOESN'T THE CONTRACT PROVIDE A SUFFICIENT REMEDY FOR MISSED PROVISIONING APPOINTMENTS?

A. Remedies provided by the agreement between NEXTLINK and BellSouth are inadequate to recoup out-of-pocket costs related to the failed or delayed conversion. Under the contract, NEXTLINK's only remedy is waiver by BellSouth of the nonrecurring charge for the transfer. Lost revenue from lost customers and increased expenses to NEXTLINK are not compensated.

Q. HAS NEXTLINK ENCOUNTERED PROBLEMS WITH BELL SOUTH'S PROVISIONING OF SERVICES OTHER THAN UNBUNDLED LOOPS?

A. Yes, NEXTLINK has encountered similar problems with many of the services it is required to obtain from BellSouth. One longstanding problem is BellSouth's delay in providing directory listings for NEXTLINK customers. When a customer transfers service to NEXTLINK, the customer often receives new telephone numbers, requiring new listings in directory assistance and in the white and yellow pages directories published by BellSouth Advertising & Publishing Co. ("BAPCO"), BellSouth's directory publishing affiliate. It often takes two weeks or more for the new telephone numbers to become listed. In the interim, NEXTLINK customers cannot be easily reached by their own customers, causing significant dissatisfaction. In addition, continuing problems with getting listing

for its customers have forced NEXTLINK to hire a full-time temporary employee to audit whether its customers have been listed in BAPCO's Memphis and Nashville directories.

As early as September 1997, NEXTLINK requested BellSouth to investigate why this delay in directory listings was occurring. As the attached Exhibit 8 indicates, BellSouth acknowledges that the problem lies with its own LCSC order center. Nevertheless, the problem continues to occur with regularity, and BellSouth has proposed no solution that will solve the problem. Id.

1 NEXTLINK is scheduled to occur, abruptly taking the
2 customer out of service, often in the midst of a
3 business day. This problem is known as disconnect in
4 error. The most common cause of this problem appears
5 to be that the BellSouth UNE technicians responsible
6 for coordinating with BellSouth's central office
7 technicians failed to notify the central office when a
8 cut-over has been rescheduled.

9 This disconnect in error problem has been a
10 source of difficulty between NEXTLINK and BellSouth for
11 many months. NEXTLINK requested that BellSouth perform
12 a root cause analysis to determine the source of these
13 problems as early as September 1997. Nevertheless, the
14 problem continues. For example, in November 1997,
15 NEXTLINK ordered changes in service for six customers,
16 all with a firm order confirmation of December 8th,
17 1997. BellSouth completed adding services for these
18 customers early, on December 2nd, 1997. Unfortunately,
19 it did not then cancel the orders to disconnect the
20 customers' service. BellSouth completed the disconnect
21 orders on December 9th, taking all six customers out of
22 service for almost three hours.

23 NEXTLINK began keeping statistics on these
24 incidents for its Nashville office in October 1997.
25 Since October 1997, NEXTLINK has placed 150 to 250

1 orders for unbundled loops per month from its Nashville
2 office, totaling approximately 500 to 1,000 unbundled
3 loops. In October, 55 of NEXTLINK's 203 orders failed
4 to cut over as scheduled. Forty of these missed
5 cut-overs were caused by BellSouth.

6 BellSouth's performance has improved since
7 1997, of November. In February 1998, BellSouth only
8 missed 7 percent of its provisioning commitments for
9 both Memphis and Nashville. But in January of 1998,
10 BellSouth missed 14.5 of the times scheduled for
11 transferring NEXTLINK customers.

12 BellSouth's continuing failure to comply
13 with its provisioning commitments has had a serious
14 effect on NEXTLINK's ability to compete. As I've
15 indicated earlier, some potential customers do not want
16 to take the risk that they will lose service or be
17 inconvenienced in switching telephone providers.
18 Others have required compensation or substantial
19 persuasion to stay with NEXTLINK after a cut-over delay
20 or loss of service.

21 In addition to problems with conversions of
22 unbundled loops, NEXTLINK has encountered similar
23 problems with many of the services it's required to
24 obtain from BellSouth. One longstanding problem is
25 BellSouth's delay in providing directory listings for

1 NEXTLINK customers. This also includes the 1411
2 database.

3 When a customer transfers service, those
4 numbers must be transferred over to Bell Advertising
5 and Publishing Company, which you guys will probab
6 know as BAPCO, so that those customers can be listed i
7 the white and yellow page directories. It often takes
8 two weeks or more for the new telephone numbers to
9 become listed. In the interim, NEXTLINK customers
10 cannot be easily reached by their own customers,
11 causing significant dissatisfaction.

12 In addition, continuing problems with
13 getting listings for customers has forced NEXTLINK to
14 hire a full-time employee to audit when customers have
15 been -- to find out if they've been listed in BAPCO's
16 Memphis and Nashville directories. This began as earl
17 as September 1997, and NEXTLINK asked BellSouth to
18 investigate delay.

19 BellSouth has acknowledged that the problem
20 lies within its own LCSC order center. Nevertheless,
21 the problem continues with regularity, and BellSouth
22 has proposed no solution that will solve the problem.

23 Over 25 percent of my time is spent meeting
24 or communicating with BellSouth regarding these
25 issues. This time represents money that could be

1 better spent providing and developing service for
2 NEXTLINK's customers and building NEXTLINK's business.

3 That concludes my summary.

4 MR. CAMPEN: Mr. Chairman, the witness
5 is available for cross.

6 DIRECTOR KYLE: May I just get
7 something straight, Ms. Dickinson? You were talking
8 about the cut-overs and the tapes being backed up, that
9 they cannot cut you over. Now, is this the same for
10 your own customers? Is there a difference? Would you
11 know?

12 THE WITNESS: I don't know that we've
13 experienced it, but if we were running a backup, then,
14 yes, we wouldn't be able to cut our customers as well,
15 I would suspect.

16 DIRECTOR KYLE: Can they do it for
17 their own customers?

18 THE WITNESS: I have no idea. I would
19 suspect not.

20 DIRECTOR KYLE: Thank you.

21 DIRECTOR MALONE: I have a couple of
22 questions. On page 3 of your testimony, towards the
23 top, I guess that's the third sentence -- or we can
24 start with the second -- "These problems predictably
25 leave NEXTLINK customers dissatisfied. Unfortunately,